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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WAYNE BROWN, RABINDRANATH DUTTA,
MICHAEL A. PAOLINI and JAMES NEWTON SMITH, JR.

Appeal 2008-5477
Application 09/895,932
Technology Center 3600

Decided:¹ January 30, 2009

Before, ANTON W. FETTING, DAVID B. WALKER, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 2, 4-6, 8-10, 12-14, 16-18, 20-22, 24, and 25. Claims 3, 7, 11, 15, 19, 23, and 26-35 have been cancelled.

We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for brokering a design among remote and local manufacturers such that a customer obtains a locally assembled, cost effective product. (Specification 1:25-28)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for coordinating a plurality of local and remote manufacturers for a manufacturing order, said method comprising the steps of:

facilitating, by at least one broker server, user selection of a customized manufacturing order for a product to be manufactured, after placement of said customized manufacturing order, by a particular local manufacturer selected by said user from among a plurality of local manufacturers, wherein said plurality of local manufacturers locally distribute manufactured products to said user without shipping said manufactured products;

dividing, by said broker server, said customized manufacturing order for said user into a plurality of manufacturable parts;

submitting, by said broker server, a local bid request for said manufacturing order to said plurality of local manufacturers;

receiving, by said broker server, at least one local bid for said manufacturing order from at least one of said plurality of local manufacturers specifying a selection of said plurality of manufacturable parts required to be manufactured by a remote manufacturer for said at least one of said plurality of local manufacturers to produce said customized manufacturing order;

submitting, by said broker server, a remote bid request to a plurality of remote manufacturers for said selection of said plurality of manufacturable parts as requested in said at least one local bids;

responsive to said broker server receiving at least one remote bid for at least one of said selection of said plurality of manufacturable parts, compiling, by said broker server, said at least one local bid and said at least one remote bid into a plurality of display options to enable said user to select said particular local manufacturer and to select at least one particular remote manufacturer from among said plurality of remote manufacturers to provide said selection of said plurality of manufacturable parts required by said particular local manufacturer; and

responsive to said broker server receiving a selection by said user of said particular local manufacturer and said at least one particular remote manufacturer, controlling, by said broker server, placement of said customized manufacturing order with said particular local manufacturer and placement of at least one separate order with said at least one particular remote manufacturer for said selection from among said plurality of manufacturable parts required by said particular local manufacturer to produce said customized manufacturing order.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Crookshanks US 7,089,203 B1 August 8, 2006

Robert Frank: The Register. “Asian jewelers carry on tradition in Little Saigon clients prefer to design rings, merchants say.” Orange County Register. Santa, Ana, California: August 10, 1989.

The following rejection is before us for review:

The Examiner rejected claims 1-2, 4-6, 8-10, 12-14, 16-18, 20-22 and 24-25 under 35 U.S.C. §103(a) as being unpatentable over Crookshanks in view of Franks.

ISSUE

Have Appellants shown that the Examiner erred in rejecting claims 1, 3, 6-9, 11, 14-17, 19, and 22-24 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Crookshanks in view of Franks on the grounds that a person with ordinary skill in the art would know based on the teachings of Franks to modify Crookshanks to allow for a user to select his or her own remote manufacturers/subcontractors.

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Examiner found that:

Frank discloses an individual making selections from remote manufacturers of customized parts. It

would be obvious to one of ordinary skill in the art at the time of the invention to modify the computerized system of Crookshanks for selection of customized products wherein local manufacturers are selected by the purchasing individual, to include the selection of the subcontractors that are also part of the Crookshanks system by the purchasing individual. Both elements - selection of local and remote component suppliers - are old and well known, and it would be obvious to use the computerized system of Crookshanks to facilitate both selection of local and remote product manufacturers.
(Answer 11)

2. Crookshanks discloses that “[t]he contractors review the sub-contractor bids, approves selected sub-contract bids, and electronically countersigns them, either creating appropriate contracts (e.g., contracts conditional on it being awarded the project contract) and reserving the sub-contractors services.” (Crookshanks, col., 29, ll. 17-21)

3. Crookshanks discloses:

Typically, a number of affiliate services 600 are involved at one or more steps of this bid management stage 340. The web site 300 preferably identify [sic] and provide [sic] hyperlinks 380 to approved affiliates who provide services to the clients of the BSSP, under fee based contracts 800 with the BSSP. These contracts typically call for commissions to be paid to the BSSP for the referral and use of the various services of the bid system and access to the web site 300 and the documentation generated and

archived. For example, one or more lenders, insurers, lawyers, accountants, and title companies may be involved in review of one or more aspects of the bidding process and the ultimate approval of the bids before a project contract can be let. As before, the access to the documents is preferably via the project web page, or the secure, sealed bid packages submitted and archived, and communication are handled by e-mail 720. To the extent approvals or other types of sign-offs are required, the appropriate lender, insurer, title company, lawyer electronically signs the necessary forms, forwards them to the BSSP where they are archived, and the appropriate parties, e.g., contractors, architects and owners/developer are notified by e-mail. Formal notification e-mails are also archived in the bid system computers 500 for record purposes.

(Crookshanks, col. 29, ll. 32-50)

4. Crookshanks also discloses that

the contractor (220 in FIG. 23) is hired by client to collect all bids for the project and an Owner/Contractor Bidding Agreement is signed by each party and transmitted to the BSSP. This contract is imported into system database, logged, saved, and a job-specific icon is attached to this agreement. ...

[T]he BSSP creates a hardcopy of the plans/overlays/boxes and transmits this to the contractor for review. Any changes in the box definitions desired by the contractor or requests for clarification are transmitted to the BSSP. Any

changes or clarification that the contractor requests may [be] documented by the BSSP on as [sic: an] addendum form, which is created logged and linked in the project database. Additionally and optionally, the contractor requests may be reviewed and approved by the client and/or architect at this stage. (Crookshanks, col. 23, ll. 9-26)

5. The Specification describes:

"Remote manufacturer" preferably refers to the individual, group, organization, business, or corporation that will bid on a manufacturable portion of a personalized design order and then manufacture the manufacturable portion if selected, however the remote manufacturer may or may not actually be geographically remote to the buyer. "Local manufacturer" preferably refers to the individual, group, organization, business, or corporation that will assemble and manufacture portions of the personalized design order, however the local manufacturer may or may not actually be geographically local to the buyer. (Specification 9:14-24)

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of

underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

The rejection is affirmed as to claims 1-2, 4-6, 8-10, 12-14, 16-18, 20-22 and 24-25. Initially, we note that the Appellants argue independent claims 1, 10 and 18 together as a group. Claim 1 is representative of the independent claims. (Appeal Br. 10). Appellants do not provide a substantive argument as to the separate patentability of claims 2, 4-6, 8, 9, 12-14, 16, 17, 20-22 and 24-25 that depend from claims 1, 10 and 18, which are the sole independent claims among those claims. Therefore, claims 2, 4-6, 8, 9, 12-14, 16, 17, 20-22 and 24-25 fall with claims 1, 10 and 18. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellants argue that:

...Crookshanks describes the consumer requesting a bid package from contractors and a consumer receiving a bid package from the contractors, where the contractors receive subcontractor bids and place them in the package. *Crookshanks*, col. 28, line 67-col. 29, line 30. No portion of

Appeal 2008-5477
Application 09/895,932

Crookshanks teaches a user selection from among subcontractors or of any particular subcontractor.
(Appeal Br. 19)

We are not persuaded by Appellants' argument here because Appellants are attacking the reference individually when the rejection is based on a combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968). The Examiner found that Frank and not Crookshanks discloses an individual making selections from among remote manufacturers of customized parts and thus it would be obvious to one of ordinary skill in the art at the time of the invention to modify the computerized system of Crookshanks wherein the purchasing individual selects the subcontractors. (FF 1)

Appellants next argue that 1.) there is no remote manufacturer in Frank because the user brings each piece in person to the jeweler to assemble; and 2.) Frank does not teach any user selection of a remote manufacturer that triggers placement of a manufacturing order with that remote manufacturer. (Appeal Br. 18-19.) Appellants' arguments however are not persuasive as to error in the rejection for the following reasons.

First, Appellants attempt to distinguish the word "remote" based on the location of the user. This argument is inconsistent with the definition Appellants give in the Specification. The Specification makes it clear that the term remote means a party responsible for the manufacturable portion of a personalized design order, "*however the remote manufacturer may or may not actually be geographically remote to the buyer*". (FF 5) In the case of

Frank, the party responsible for the manufacturer of the precious stones meets this definition because the precious stones must be manufactured from rough rocks by such processes as cutting, grinding and polishing. Second, it is not necessary for Frank to teach the placement of the manufacturing order as argued, because the rejection is based on a combination of references under 35 U.S.C. § 103(a) and Crookshanks discloses that the general contractor selects a subcontractor resulting in the placement of at least one separate order with at least one particular subcontractor/remote manufacturer (FF 2).

Appellants also argue

... because Frank teaches away from any automated, not in person, purchasing of any portion of a ring, it is clear that (1) neither Frank nor the knowledge generally available to one of ordinary skill in the art suggests the desirability of the combination of Frank and Crookshanks to teach automating the ring purchasing process of Frank, and (2) the proposed modification of Frank would render Frank's description of purchasing each portion of a ring separately, in person, to be able to separately establish trust with each of the ring seller, the diamond seller, and the diamond placer, unsatisfactory for its intended purposes. (Appeal Br. 17)

We do not agree with Appellants. Nothing in Crookshanks suggests that the process of assembling the parts of the ring would be any less effective or less based on trust if effected by the automated process in Crookshanks. This is because the relationship between owner and contractor

in Crookshanks is controlled by a signed written Owner/Contractor Bidding Agreement which becomes part of the record and is updated with any changes during the process (FF 4). A document, such as the Owner/Contractor Bidding Agreement in Crookshanks, would provide even greater stability to an owner-manufacture relationship given that in addition to trust, the document will further serve to memorialize the duties and obligations of both parties and thereby insure greater trust that the job will be completed as specified.

Finally, we do not agree with Appellants' contention that the knowledge generally available to one of ordinary skill in the art would not suggest the desirability of the combination of Frank and Crookshanks to automate the ring purchasing process of Frank (Appeal Br. 16-17), because taking what is otherwise done by direct human intervention as done in Franks, and automating it to gain the well accepted benefits of such automation, does not diminish the human-worked task, but rather improves it. *See Leapfrog Enterprises, Inc. v. Fisher Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (“[O]ne of ordinary skill in the art . . . would have found it obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost.”)

Appeal 2008-5477
Application 09/895,932

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1, 2, 4-6, 8-10, 12-14, 16-18, 20- 22, 24, and 25 under 35 U.S.C. § 103(a) as unpatentable over Crookshanks in view of Franks.

DECISION

The decision of the Examiner to reject claims 1,2, 4-6, 8-10, 12-14, 16-18, 20- 22, 24, and 25 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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